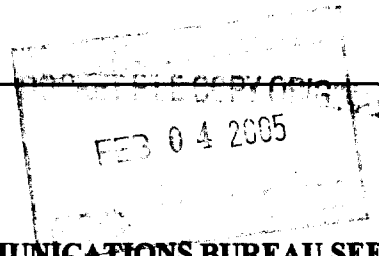




PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
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DA 05-313
February 4, 2005

**WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT
ON PETITION FOR DECLARATORY RULING FILED BY STOKES ENVIRONMENTAL
SERVICES REGARDING ENVIRONMENTAL ASSESSMENTS FOR PROPOSED FACILITIES
IN WETLANDS
(WTB Docket No. 05-44)**

Comment Date: March 7, 2005

Reply Date: March 22, 2005

In this Public Notice, the Spectrum and Competition Policy Division ("Division") of the Wireless Telecommunications Bureau seeks comment on a Petition for Declaratory Ruling ("Petition"),¹ filed by Stokes Environmental Services, Ltd. ("Stokes") regarding Section 1.1307(a)(7) of the Commission's rules.

The Commission's rules implementing the National Environmental Policy Act ("NEPA") and other federal environmental statutes² require an applicant to file an environmental assessment (EA) when a proposed facility (e.g., tower) will involve a significant change in surface features (e.g., wetland fill).³ In its Petition, Stokes indicates that when an applicant proposes a facility to be located in a wetland, an applicant first obtains a permit from the U.S. Army Corps of Engineers ("Corps") to construct the tower in a wetlands area.⁴ Stokes asserts that because the Corps conducts a NEPA review of the proposed facility when the Corps approves the wetland permit,⁵ filing an EA with the Commission is duplicative. Therefore, Stokes requests a ruling that it is not necessary for an applicant to file an EA with the Commission.

The Division seeks comment on the Petition and the relationship between Section 1.1307(a)(7) and the Corps' rules, practices and procedures.⁶ We also note that the Corps issues nationwide permits for projects which affect *de minimis* areas of wetlands.⁷ We seek comment on how construction pursuant

¹ See Letter from Thomas L. Stokes, Jr., Stokes Environmental Services, LLC, to Jeffrey Steinberg, Esq., Deputy Chief, Spectrum and Competition Policy Division, dated May 28, 2004. A copy is attached to the public notice.

² See 47 C.F.R. §§ 1.1301-1.1319.

³ See 47 C.F.R. § 1.1307(a)(7).

⁴ See 33 C.F.R. §§ 325.1-10 and Appendices (Processing of Department of Army Permits); *see also* Section 404 of the Clean Water Act, 33 U.S.C. § 1344.

⁵ See 33 C.F.R. §§ 325.1-10 and Appendices.

⁶ See Weigel Broadcasting Co., *Memorandum Opinion & Order*, 11 FCC Rcd. 17202, 17207, ¶13 (1998).

⁷ See 33 C.F.R. §§ 330.1-6.

to a nationwide permit is properly treated under Section 1.1307(a)(7). Parties should limit their comments to these issues.

Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before March 7, 2005, and reply comments on or before March 22, 2005. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁸ Given recent changes in the Commission's mail delivery system, parties are strongly urged to use the ECFS to file their pleadings. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, electronic filers should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an email to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. All filings by mail (including U.S. Postal Service Express Mail, Priority Mail, and First Class Mail) must be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington D.C. 20054. All filings sent to the Commission by overnight delivery, e.g., Federal Express (other than by U.S. Postal Service Express Mail and Priority Mail), must be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. All hand-delivered or messenger-delivered filings must be delivered to the Commission's filing location at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002-4913. The filing hours at this facility are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Parties who choose to file by paper should also submit their comments on diskette and by electronic mail to: Don Johnson, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20054, donald.johnson@fcc.gov. The required diskette copies of submissions should be on 3.5-inch diskettes formatted in an IBM-compatible format using Microsoft Word or compatible software. Each diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street S.W., CY-B402, Washington, D.C. 20054.

Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20054. These documents also will be available electronically from the Commission's Electronic Comment Filing System. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C., 20054, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail at www.bcpweb.com. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (tty).

⁸ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (May 1, 1998).

For further information, please contact Don Johnson at 202-418-7444 or donald.johnson@fcc.gov.

STOKES ENVIRONMENTAL ASSOCIATES, LTD

28 May 2004

Jeffrey Steinberg
Deputy Chief, Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, Southwest
Washington, DC 20554

Dear Mr. Steinberg:

This is to request a declaratory ruling on the question of whether an Environmental Assessment is required under 47 CFR 1.1307 when a proposed project will result in wetland impacts; and such impacts have been reviewed, approved and permitted by the U.S. Army Corps of Engineers (Corps) or their designated permitting agency (minor projects are often delegated to state environmental agencies with oversight by the Corps).

The declaratory ruling is for projects where the review of questions under 47 CFR 1.1307 finds no effects other than the aforementioned previously permitted wetland impacts.

The existence of a Corps-approved permit indicates that the agency with expertise in wetlands has completed its analysis and found the wetland effects are compliant with NEPA and with the Clean Water Act, based on minimal extent of impacts and/or mitigation to compensate such impacts. As such, it would appear reasonable to conclude that the project does not involve a significant change in surface features [see 47 CFR 1.1307a(7)].

By the same logic, when the SHPO concludes there is no effect on historic resources, there is similarly no requirement for an EA. It is also noted that NEPA requires federal agencies to minimize paperwork, and the requirement for an EA for previously permitted wetland impacts would be inconsistent with the paperwork reduction requirements.

I have discussed the subject question with Mr. Horst Greczmiel, Associate Director for NEPA Oversight at the Council for Environmental Quality (CEQ) in Washington, D.C. According to NEPA, CEQ has the task of ensuring that federal agencies meet their obligations under the Act. CEQ is also a reference when agencies disagree over environmental assessments. Mr. Greczmiel has made it clear to me that requiring an EA for prior permitted wetland impacts is not an obligation under NEPA. Furthermore, such a requirement conflicts with NEPA because of the paperwork reduction stipulations. I encourage you to discuss this with Mr. Greczmiel at 202-395-0827.

Mr. Jeffery Steinberg
28 May 2004
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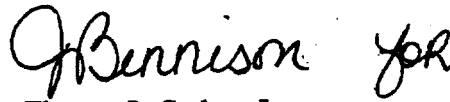
This matter is of importance because of the crucial need for rapid site approval in the complex arena of tower siting, which involves a nonlinear network of approvals from land owners, investors, engineers, local agencies, state and federal agencies, each of which has deadlines.

Your expedited response confirming that a NEPA EA is not required under 47 CFR 1.1307, for prior-permitted wetland impacts, would be greatly appreciated.

Please do not hesitate to call if you have any questions.

With best regards.

Sincerely,
Stokes Environmental Associates, Ltd.


Thomas L. Stokes, Jr.

cc: Mr. Don Johnson, FCC Wireless Telecommunications Bureau

jeb/my docs/letters/fcc wireless ltr